

The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a PLR.)

June 2, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see www.revenue.state.il.us/Laws/regs/part1200/), is in response to your letter of February 23, 2003. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

The Department of Revenue has recently provided a Private Letter Ruling to our client (copy enclosed). As we discussed on the telephone several weeks ago, in order to fully understand the taxpayer's responsibilities, we would like a brief statement from the Department clarifying the language quoted below that appeared in the third to last paragraph of the Private Letter Ruling.

'This ruling is based upon third parties not installing the tangible personal property that is purchased.'

Our concern is that this language may suggest that the Private Letter Ruling would not be effective if the property in question were to be installed by the person who sold it to the Retail Seller. As we discussed, it is anticipated that it would not be at all uncommon for the Wholesale Transaction Vendor to undertake to install the equipment sold to the Retail Seller at the Operating Company's site. Could you please clarify that, so long as the property sold retains its status as tangible personal property after it has been installed, the conclusion expressed in the private letter ruling would apply? The quoted language applies only to tangible personal property which is converted into real estate when installed and does not apply to tangible personal property which remains as such after installation.

It is our understanding that the quoted language was intended only to reflect the view that, if the property sold to the Retail Seller were to become part of real estate after installation, then the Wholesale Transaction Vendor would be a construction contractor.

Under Illinois law, a person who takes tangible personal property off the market and converts it into real estate is deemed to be a construction contractor. As a construction contractor, that person is the end-user of the tangible personal property involved. Because the construction contractor is the end user, it incurs Illinois Use Tax and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If the tangible personal property is purchased from suppliers that do not collect the tax, then the construction contractor is required to self-assess and remit the Use Tax to the Department based upon the cost price of the property.

The quoted language in the Private Letter ruling should not apply to the situation where the Wholesale Transaction Vendor sells the equipment to the Retail Seller for resale to the Operating Company and the Wholesale Transaction Vendor installs the equipment. So long as the equipment does not become real estate when it is installed, the transaction would consist of two sales. The first sale would be from the Wholesale Transaction Vendor to the Retail Seller; assuming that the appropriate exemption certificate has been provided, that sale would be an exempt sale for resale. The second sale would be from the Retail Seller to the Operating Company. The fact that the Wholesale Transaction Vendor would provide an installation service would not affect the analysis unless, as discussed in the preceding paragraph, the equipment were to become part of the real estate.

Thank you for your consideration in this matter. Please feel free to contact us should you have any questions.

You are correct that the phrase: "This ruling is based upon third parties not installing the tangible personal property that is purchased" that we included in the prior ruling does relate to a construction contractor situation. The analysis set forth in the previously issued private letter ruling is not effected unless the equipment becomes permanently attached to real estate.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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